

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

PERCY F NEWBY, et al.,

Defendants.

CASE NO. C18-5978RBL

ORDER

THIS MATTER is before the Court on Defendant Newby's second Motion to Recuse/for Disqualification [Dkt. # 88]. Newby complains that the United States filed a "motion for leave to file an overlength brief" [Dkt. # 77] but that, because Newby does not receive electronic notice of such filings, the Court granted the request before Newby had a chance to oppose it. Newby has since filed a response to the request, which, like the current motion, focusses solely on the timing of the request. He does not articulate any basis for denying a common (and routinely granted) same-day motion for leave to file an over-length brief. [See Dkt. # 82].

1 In any event, Newby again asks the Court to recuse itself (or for Chief Judge Martinez to
2 disqualify it) based on the “bias” evident in the Court’s granting the Plaintiff’s motion for leave
3 to file an overlength brief.

4 A federal judge should recuse himself if “a reasonable person with knowledge of all the
5 facts would conclude that the judge’s impartiality might reasonably be questioned.” 28 U.S.C.
6 § 144; *see also* 28 U.S.C. § 455; *Yagman v. Republic Insurance*, 987 F.2d 622, 626 (9th Cir.
7 1993). This objective inquiry is concerned with whether there is the appearance of bias, not
8 whether there is bias in fact. *See Preston v. United States*, 923 F.2d 731, 734 (9th Cir. 1992); *see*
9 *also United States v. Conforte*, 624 F.2d 869, 881 (9th Cir. 1980). In the absence of specific
10 allegations of personal bias, prejudice, or interest, neither prior adverse rulings of a judge nor his
11 participation in a related or prior proceeding is sufficient” to establish bias. *Davis v. Fendler*,
12 650 F.2d 1154, 1163 (9th Cir. 1981). Judicial rulings alone “almost never” constitute a valid
13 basis for a bias or partiality motion. *Liteky v. United States*, 510 U.S. 540, 555 (1994).

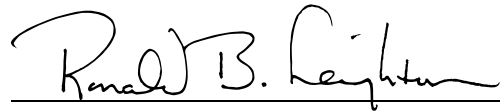
14 Under the Local Rules of this District, a motion for recusal is addressed first to the
15 presiding judge, and if the judge does not recuse voluntarily, the matter is referred to the chief
16 judge for review. *See* LCR 3(e).

17 Newby’s Motion is based only on a ruling made in this case, which is not a valid basis for
18 a motion to recuse. And the ruling itself is utterly benign—permission to file an overlength brief.
19 Newby is free to file an overlength response, and is encouraged to do so in a timely manner. The
20 Court will not recuse itself from this case voluntarily based on the claim that the Court’s prior
21 ruling is evidence of bias or a lack of impartiality.

1 Under LCR 3(e), this Matter is REFERRED to Chief Judge Martinez for review.

2 IT IS SO ORDERED.

3 Dated this 6th day of January, 2020.

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5 Ronald B. Leighton
6 United States District Judge
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